

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

BASIR MATEEN RAZZAK,)	
)	
Plaintiff,)	
)	
v.)	1:15CV1016
)	
ACKOYT, et al.,)	
)	
Defendants.)	

ORDER

The Recommendation of the United States Magistrate Judge was filed with the Court in accordance with 28 U.S.C. § 636(b) and, on April 15, 2016, was served on the parties in this action. (ECF Nos. 19, 20.) Plaintiff filed an Objection to the Recommendation (ECF No. 23).¹ The Court has appropriately reviewed the portions of the Magistrate Judge's Recommendation to which objection was made and has made a *de novo* determination in accord with the Magistrate Judge's Recommendation. The Court therefore adopts the Magistrate Judge's Recommendation.²

¹ Plaintiff labels his objection both as a "Second Reconsideration" and a "Response to Mag/Judge L. Patrick's [sic] Auld Recommendation April 15, 2016." (ECF No. 23 at 1). The Court construes Plaintiff's filing as an objection to the Recommendation.

² After filing his Motion to Alter or Amend Judgment (ECF No. 18), Plaintiff filed a Notice of Appeal (ECF No. 21) of the Court's order dismissing this action (ECF No. 15). Although an appeal "divests the district court of its control over those aspects of the case involved in the appeal," Griggs v. Provident Consumer Disc. Co., 459 U.S. 56, 58 (1982), where a party files a motion to alter or amend judgment that warrants no relief, the district court may dispose of the motion without disturbing the appeal. See Fobian v. Storage Tech. Corp., 164 F.3d 887, 890 (4th Cir. 1999) ("If a Rule 60(b) motion is frivolous, a district court can promptly deny it without disturbing appellate jurisdiction over the underlying judgment."); see also id. at 891 ("[W]hen a Rule 60(b) motion is filed while a judgment is on appeal, the district court has jurisdiction to entertain the motion, and should do so promptly. If the district court determines that the motion is meritless, as experience demonstrates is often the case, the court should deny the motion forthwith; any appeal from the denial can be consolidated with the appeal from the underlying order."). Here, the Court adopts the Magistrate Judge's Recommendation concluding that Plaintiff's Motion to Alter or Amend Judgment (ECF No. 18) warrants no relief. Accordingly, the Court will dispose of the Motion to Alter or Amend Judgment, notwithstanding Plaintiff's Notice of Appeal.

IT IS THEREFORE ORDERED that Plaintiff's Motion to Alter or Amend Judgment (ECF No. 18) is denied.

This, the 3rd day of May, 2016.

/s/ Loretta C. Biggs
United States District Judge